United Nations A/HRC/34/63

General Assembly

Distr.: General
6 March 2017

Original: English

Human Rights Council
Thirty-fourth session
27 February-24 March 2017
Agenda item 4
Human rights situation that require the attention of the Council

Report of the Commission on Human Rights in South Sudan*

Summary

In the present report, submitted to Human Rights Council pursuant to its resolution 31/20, the Commission on Human Rights in South Sudan gives an overview of the situation of human rights in South Sudan, and assesses the implementation of the provisions on transitional justice of the Agreement on the Resolution of the Conflict in the Republic of South Sudan signed by the parties to the conflict in August 2015.

The Commission recommends that the Government of South Sudan, with immediate effect, cease hostilities, conclude a permanent ceasefire and renew publicly its commitment to the implementation of the Agreement on the Resolution of the Conflict in Republic South Sudan, including cooperation with the African Union, for the speedy establishment of a hybrid court for South Sudan. The Commission also recommends the immediate establishment of an international, independent investigation, under the auspices of the United Nations, into the most serious crimes committed in South Sudan since December 2013 by, inter alia, collecting and preserving evidence of human rights violations and abuses and violations of international humanitarian law, and by supporting criminal proceedings before the hybrid court and national, regional and international tribunals with jurisdiction over such crimes.

* The present report was submitted late in order to reflect the most recent developments.

GE.17-03970(E)

Please recycle

Contents

		Page
I.	Introduction	3
II.	Methodology	4
III.	Context and background	4
	A. Political and security context	4
	B. Humanitarian situation	5
IV.	Overview of the situation of human rights	7
	A. Violations of the right to life and bodily integrity	7
	B. Sexual and gender-based violence	8
	C. Violations of the rights of the child	10
	D. Violations of the right to freedom of expression and opinion	10
V.	Accountability and transitional justice	12
	A. Hybrid court for South Sudan	13
	B. Commission for truth, reconciliation and healing	14
	C. Compensation and reparations authority	15
	D. Proposed national dialogue	16
	E. The way forward	16
VI.	Conclusion and recommendations	17
	A. Conclusions	17
	B. Recommendations	19

I. Introduction

1. In its resolution 31/20, the Human Rights Council established the Commission on Human Rights in South Sudan for a period of one year, and requested the Commission to, inter alia, monitor and report on the situation of human rights in South Sudan and to make recommendations for its improvement, and to assess past reports on the situation of human rights since December 2013 in order to establish a factual basis for transitional justice and reconciliation.

2. On 14 June 2016, the President of the Human Rights Council appointed Yasmin Sooka, Kenneth R. Scott and Godfrey M. Musila to serve as the three members of the Commission, with Ms. Sooka as its Chair. The Commission began its work in July. It conducted its first mission to South Sudan and surrounding regions from 8 to 15 September, and a second mission from 21 November to 8 December. The Commission also visited Ethiopia, Kenya and Uganda.

3. On 14 December 2016, the Human Rights Council convened a special session on South Sudan to discuss the deteriorating situation of human rights, which was attended by the Chair of the Commission. At the conclusion of the special session, the Council, in its resolution S-26/1, reaffirmed the mandate of the Commission, with renewed emphasis on the need to establish the facts and circumstances of alleged violations and abuses of human rights with a view to ensuring accountability. The Council requested the Commission to suggest priority recommendations for the Government of South Sudan to consider how to end sexual and gender-based violence.

4. In the present report, which covers the period from July 2016 to February 2017, the Commission assesses the situation of human rights in South Sudan and the implementation of the provisions of chapter V of the Agreement on the Resolution of the Conflict in the Republic of South Sudan, including the prospects for the establishment of a hybrid court for South Sudan. It also addresses recommendations to the Government of South Sudan and the international community on combating impunity and strengthening accountability for human rights violations and abuses.

5. During its two missions to South Sudan, the Commission was able to meet a wide range of senior government officials, including the First Vice-President of South Sudan, the Ministers for Foreign Affairs, Defence and Justice, the Chief of General Staff of the Sudan People's Liberation Army (SPLA), the Chief Justice, members of the judiciary, the leader of the South Sudan People's Liberation Movement/Army in Opposition (SPLM/A in Opposition) and the former Vice-President, Riek Machar, in South Africa. The Commission also met with members of the South Sudan Human Rights Commission and the Peace and Reconciliation Commission. In addition, it visited Bentiu in Unity and Malakal in Upper Nile, Wau Shilluk in Upper Nile, Wau in Western Bhar el Ghazal, Aweil in Northern Bahr el Ghazal, Juba and Kuda in Central Equatoria, and Torit in Eastern Equatoria.

6. The Commission held extensive discussions with United Nations and humanitarian workers, including the senior leadership of the United Nations Mission in South Sudan (UNMISS), members of different humanitarian clusters and of specialized agencies of the United Nations, diplomats, representatives of the African Union, the Intergovernmental Authority on Development (IGAD), the Chair and members of the Joint Monitoring and Evaluation Commission overseeing the Agreement on the Resolution of the Conflict in the Republic of South Sudan, the Special Envoy of the Secretary-General for the Sudan and South Sudan, and the Special Representative of the Secretary-General to the African Union. In Addis Ababa, the Commission also met with representatives of the Peace and Security Council and the Office of Legal Counsel of the African Union. In Nairobi and Addis Ababa, the Commission met with government officials.

7. The Commission thanks the Government of South Sudan for facilitating its missions and responding to its requests for information. It is grateful for the full cooperation it received from the Governments of Ethiopia, Kenya and Uganda during its missions to those States, and in particular for facilitating the Commission's visits to refugee camps in Gambella in Ethiopia and Adjumani in Uganda.

8. The Commission also appreciated the valuable contributions made to its work by Office of the United Nations High Commissioner for Human Rights (OHCHR), UNMISS, non-governmental organizations and experts. It is grateful for the support received from United Nations agencies and partners, including the Office of the United Nations High Commissioner for Refugees (UNHCR), in Ethiopia and Uganda.

II. Methodology

9. The Commission interpreted its mandate as requiring it to monitor and report on the current situation of human rights in South Sudan. It did not have the mandate or resources to carry out investigations or fact-finding. The Commission therefore based its methodology on OHCHR and international standards for human rights monitoring.

10. The conclusions reached in the present report are based on information received from rights-holders, victims and witnesses of violations of human rights violations and abuses, civil society actors and United Nations and humanitarian agencies working in South Sudan, and the Government of South Sudan. The Commission also reviewed material received from secondary sources, including reports by the African Union Commission of Inquiry on South Sudan, UNMISS, United Nations agencies, and international and national human rights organizations.

11. The Commission interviewed human rights defenders, journalists, editors, religious leaders, members of civil society organizations, former detainees and officials of the governing party and SPLM/A in Opposition, and former political detainees during its missions to South Sudan and neighbouring countries.

12. The Commission thanks all the victims and witnesses who shared their experiences. The present report includes information only where sources granted informed consent and where disclosure would not lead to any identification or result in harm. Primary responsibility for protecting victims, witnesses and other persons cooperating with the Commission rests, however, with their countries of residence and nationality.

III. Context and background

A. Political and security context

13. Following the signing of the Agreement for the Resolution of the Conflict in the Republic of South Sudan in August 2015, Dr. Riek Machar returned to Juba on 26 April 2016 to take up the position of First Vice-President in the Transitional Government of National Unity. The delay in his return held up implementation of the Agreement for nearly eight months. Nevertheless, Dr. Machar's return resulted in some steps being taken to complete the arrangements enshrined in the Agreement, including the establishment of a Transitional Government of National Unity and power-sharing arrangements between the signatories to the Agreement, namely SPLA, SPLM/A in Opposition, the Group of Former Political Detainees and the Group of Other Political Parties.

14. On 2 October 2015, President Salva Kiir announced the demarcation of 28 States (establishment order 36/2015), a decision perceived by many as an attempt to reconfigure

existing State boundaries to the benefit of the Dinka majority tribe and that has undermined the peace agreement significantly. The decision has also been challenged on the grounds that it violates the peace agreement and the Transitional Constitution of South Sudan, which officially recognizes 10 States in South Sudan. The demarcation has caused a great deal of resentment among minority ethnic communities, who describe it as a land-grabbing measure aimed at increasing the control of the Dinka ethnic group over vital resources, such as oil. On 14 January 2017, President Kiir further exacerbated the situation by creating an additional four States by decree, bringing the total to 32.

15. Intense fighting broke out in Juba from 7 to 11 July 2016 between forces loyal to President Kiir and those supporting the former First Vice-President, Dr. Machar. In the aftermath of the fighting, more than 36,000 civilians sought refuge in United Nations and aid organization compounds; hundreds of people were killed, including civilians and two United Nations peacekeepers. UNMISS reported more than 217 incidents of sexual violence perpetrated by the warring parties during the four days of fighting. On 11 July, in Juba, SPLA forces attacked the Terrain Hotel housing international humanitarian workers, killing a Nuer journalist and beating and raping several foreign aid workers.

16. The violence in Juba quickly spread to other parts of the Equatoria region as SPLA carried out intense military operations in pursuit of suspected opposition members believed to have fled through the region en route to neighbouring Uganda and the Democratic Republic of the Congo. The Government's military operations, conducted predominantly by Dinka troops, reignited long-standing fears and mistrust between the Equatoria communities and Dinkas. The increasingly strained relations between the two communities has been exemplified by an upsurge in hate speech and in incitement to violence, as well as in incidents targeting individuals and communities based on ethnicity.

17. Riek Machar escaped from Juba and resurfaced weeks later, injured, with 800 of his men in the Democratic Republic of the Congo. Citing fears for his life, he announced that he would only return to Juba when an international force was deployed there. President Kiir declared that Dr. Machar had abandoned his position and subsequently issued a decree appointing Taban Deng Gai, a former chief negotiator of SPLM/A in Opposition, as First Vice-President.

18. In the aftermath of the July violence, regional bodies, including IGAD and the African Union, called upon the Security Council to establish a regional protection force to stem the violence and to protect civilians. On 12 August, the Council extended the mandate of UNMISS and authorized a regional protection force of 4,000 troops to bolster its capacity. The newly authorized force is mandated to, inter alia, provide a safe and secure environment in and around Juba, and protect United Nations staff, humanitarian actors and civilians. While the Government has in principle agreed to the new force, it has continued to delay its deployment. Some government officials recently declared that the protection force is no longer needed because stability has returned to Juba, which has raised concerns about the Government's commitment to the force.

B. Humanitarian situation

19. The humanitarian situation continued to deteriorate during the period under review because of the ongoing conflict. Fighting between government and opposition forces intensified in the Equatorias as well as other parts of the country, including Western Bahr el Ghazal and the Upper Nile region. The country has been plunged into a severe economic crisis. It is dependent on oil revenues for its income; current reserve estimates indicate, however, that oil production will decline to negligible levels by 2035. Furthermore, the economic downturn has triggered inflation, which has reportedly reached a rate of 900 per cent on the black market.

20. South Sudan has become the largest source of displacement in Africa. According to UNHCR, 1.5 million South Sudanese refugees live in neighbouring States, half of them having fled in 2016. The bulk of recent refugees have made their way to Uganda (52,600 in January alone), while others have fled to the Sudan, the Central African Republic, the Democratic Republic of the Congo, Ethiopia and Kenya. Some 87 per cent of South Sudanese refugees in the region are women and children. As many as 36,000 South Sudanese refugee children are unaccompanied or separated from their parents, while the majority of them are not enrolled in school, creating another "lost generation". Inside South Sudan, nearly 2 million people are internally displaced, including 223,994 people living in UNMISS protection of civilian sites who are desperate to return home and support themselves.

21. Diseases, protracted instability, the escalation of the conflict and widespread destruction have combined to generate unprecedented levels of hunger. On 20 February 2017, the United Nations officially declared, on the basis of its latest food security analysis, a state of famine in two counties in Unity State, and that two other counties were also at risk. United Nations agencies reported that food insecurity had deteriorated to unprecedented levels in these areas owing to protracted violence arising from the ongoing conflict, displacement, and the lack of access for humanitarian actors to deliver aid. A joint United Nations humanitarian food security assessment conducted in January 2017 found that more than 4.9 million people (approximately 42 per cent of the population) were severely food insecure; this number was expected to rise to 5.5 million (47 per cent of the population) from February to April 2017.[1] In Greater Unity State, the famine has been largely caused by insecurity and the conflict, which has prevented farmers from harvesting their crops.[2] Food insecurity is expected to reach massive proportions in 2017. The price of staples has already reached record levels; in some areas, four times the price of a year ago. Population growth and infant mortality remain a challenge in South Sudan; the country is also currently experiencing a cholera outbreak for the third consecutive year.

22. According to the Office for the Coordination of Humanitarian Affairs, more than 7 million people are now in need of urgent humanitarian assistance and protection.[3] South Sudan is one of the most logistically challenged countries in the world in which to deliver aid owing to the lack of roads or viable airfields, and a rainy season that can last up to eight months. In addition, the Government has imposed restrictions on movement of aid, including preventing aid delivery to civilians in opposition-controlled territories. On 31 December 2016, the National Security Service issued a directive to eight humanitarian organizations to stop their operations, including the dispatch of aid convoys by road and boat to Panyiyar, Nyong and Ganyliel, in effect preventing assistance to civilians living in those opposition-controlled territories.

23. Since December 2013, at least 67 aid workers, most of them South Sudanese, have reportedly been killed. Non-governmental organizations account for the delivery of around 70 per cent of all humanitarian assistance in South Sudan, providing a vital service for millions. Their staff members, however, remain extremely vulnerable, without the same protection as employees of the United Nations. Overall, 831 humanitarian access incidents were reported from January to November 2016; they included assaults, ambushes and

[1] Reliefweb, IPC, Integrated Food Security Phase Classification: the Republic of South Sudan, Key IPC Findings: January-July 2017.

[2] IPC in South Sudan, "Localized famine and unprecedented levels of acute malnutrition in Greater Unity", IPC Alert, issue 6, 20 February 2017.

[3] Office for the Coordination of Humanitarian Affairs, *Humanitarian Needs Overview 2017: South Sudan*, December 2016.

armed attacks on aid workers in Eastern Equatoria, Central Equatoria, Western Equatoria, Lakes and Western Bahr el Ghazal, for which nobody has been held accountable. In December 2016, at least 116 aid workers were relocated from Central Equatoria, Upper Nile and Unity. Millions of dollars worth of aid has also been looted throughout the country. Humanitarian vehicles have been targeted and damaged, and staff members robbed. Despite the growing humanitarian crisis, in December 2016, the Government ordered senior staff members of an international humanitarian organization to leave South Sudan, without any explanation.

IV. Overview of the situation of human rights

24. The Commission notes how difficult it is to illustrate the sheer scale and increase in violations being committed throughout the country without being able to list hundreds of reported incidents, which would go beyond the scope of the present report. The events described below are emblematic of the kinds of incidents being reported every month in various States, including, most worryingly, those that were peaceful a year ago.

A. Violations of the right to life and bodily integrity

25. Since the outbreak of violence in 2013, civilians have been deliberately and systematically targeted on the basis of their ethnicity by armed forces and groups, including SPLA and SPLM/A in Opposition, and also by groups aligned with them. Individuals have been targeted for killing, arbitrary arrest and detention, sexual violence, sexual slavery and forced marriage. Communities have been subjected to scorched-earth policies that result in the destruction of their homes and means of livelihood. Many of the attacks have been carried out by SPLA soldiers and the militias affiliated with them. Armed groups attack villages, burn homes, kill and rape. Interviewees described seeing corpses with their hands tied behind their backs and their mouths taped closed.

26. The Commission notes that, in many instances, the Dinka-dominated Government, through its National Security Service and SPLA, intentionally targets non-Dinka ethnic groups. Government leaders and politicians, including the President, have engaged in hate speech and ethnically divisive rhetoric on social media. There have been numerous reports of SPLA soldiers targeting Nuer civilians and raping Nuer women, while accusing the women or their families of "supporting the rebels". The killings, disappearance and rape of Nuer persons by SPLA during the July violence in Juba also indicate a deliberate attempt by government forces to target this ethnic group.

27. According to UNMISS internal situation reports, SPLA soldiers were also responsible for numerous cases of killings, torture, rape and beatings in Western Equatoria, where more than 18 incidents were reported between December 2016 and January 2017. SPLA was also alleged to be responsible for the displacement in January 2017 of more than 700 civilians fleeing violence in Bazumburu, Rimenze, Bodo, Gitikiri and surrounding villages. UNMISS patrols reported having found six corpses alongside the road between Madebe and Bangusu, approximately 70 km from Yambio town in Western Equatoria. The corpses, said to be members of the Zande tribe, were reportedly found blindfolded and with their hands tied.

28. On 8 October 2016, 20 civilians were found dead in Central Equatoria, on the Yei to Juba road; most were internally displaced persons. According to United Nations reports, the killings were ethnically motivated (S/2016/950, para. 41).

29. In October 2016, in Upper Nile State, 33 civilians were injured in clashes between SPLA and SPLM/A in Opposition, involving repeated firing of mortar shells into Wau

Shilluk. The Commission visited the makeshift hospital in Wau Shilluk after the incident and interviewed victims, including young children. In January 2017, clashes broke out again in Upper Nile State, with fighting intensifying towards the Paloch oil fields, Renk and Malakal. As a result, members of the Shilluk ethnic community were forced out of their homes. The town of Wau Shilluk is now reported by UNMISS to be deserted after intense fighting displaced more than 20,000 inhabitants.

30. In central and southern Unity State, a combination of drought and lost opportunities for cultivation, the ongoing conflict, and looting and insecurity have led to a deterioration in living conditions. SPLA is alleged to have attacked six villages on 13 and 14 October 2016 in Unity State. During the attacks, SPLA soldiers allegedly fired at civilians indiscriminately, pillaged private property and burned down at least 40 houses. Further clashes in January 2017 between SPLA and SPLM/A in Opposition left five civilians dead.

31. In November 2016, on the road from Lankien (northern Jonglei State), armed Murle tribesmen in green military uniforms with the South Sudan flag are alleged to have killed five civilians and abducted a child. The perpetrators were allegedly in possession of AK-47 rifles, which were reportedly marked "South Sudan Police". In November, 300 cattle were also taken, allegedly by armed Murle tribesmen. In January 2017, 11 people were killed and 13 wounded in a cattle raid by Murle tribesmen.

32. Violent acts have also been directed against members of the Dinka tribe. These acts were blamed by the Government on SPLM/A in Opposition, which in turn denied having any involvement in them. In the aftermath of the violence in Juba in July 2016, several attacks were made on the main roads linking the capital to Central Equatoria, resulting in the targeted killing of Dinka women and children. SPLM/A in Opposition has allegedly also attacked hospitals and religious sites in South Sudan; given the difficulty of access to the areas it controls, reliable information is hard to obtain. It was allegedly responsible for the abduction of 20 staff members of international non-governmental organizations, who were unlawfully detained, threatened, interrogated, severely beaten and subject to extortion.

33. The Commission raised the issue of denial of humanitarian access with the Chief of Staff of the South Sudan Army, who denied the allegations. The reality on the ground nonetheless remains challenging, as SPLA soldiers and members of the security services often deny access arbitrarily.

B. Sexual and gender-based violence

34. In 2014, the Special Representative of the Secretary-General on Sexual Violence in Conflict stated that sexual violence was a consistent characteristic of the conflict in South Sudan.[4] With the recent spread of the conflict to the Equatorias and Unity, Upper Nile and Western Bahr el Ghazal States, sexual violence has increased even further. In February 2017, the South Sudan Protection Cluster reported a staggering 61 per cent increase in the number of cases of sexual or gender-based violence reported between 2015 and 2016.[5]

35. In the Protection Strategy baseline survey conducted by the United Nations Population Fund (UNFPA) on behalf of the humanitarian country team in October and November 2015 in four protection-of-civilians sites in Juba, it was found that 72 per cent of women had reported having been raped since the conflict broke out – the vast majority of

[4] "UN Special Representative of the Secretary-General on Sexual Violence in Conflict concludes first mission to South Sudan with agreement with Government", United Nations, press release, 13 October 2014.

[5] South Sudan Protection Cluster, Protection Trends: South Sudan, 2015 – 2016, February 2017, p. 14.

the cases committed by police or soldiers – and that a staggering 75 per cent had been forced to watch someone else being sexually violated. In July 2016, in Juba, UNMISS documented 217 cases of rape, including gang rape, committed at government checkpoints erected across the city and during house-to-house searches by SPLA soldiers.[6] On 16 January 2017, UNMISS and OHCHR published a report on the violations perpetrated during the fighting in Juba, in which they noted that sexual violence had been mainly perpetrated by SPLA, SPLM/A in Opposition and armed groups aligned to them, members of the National Security Services and the police.[7]

36. Women described to the Commission how they were attacked and in many cases raped when they went outside the UNMISS protection-of-civilians site in Juba. One survivor recounted to the Commission how she had witnessed the rape of a woman, who begged the perpetrators to kill her instead. After raping the woman, soldiers cut her genitalia and left her for dead as punishment for "being stubborn". The same survivor told the Commission she had suffered anal rape in July 2016 that left her incontinent. When the Commission met her in December 2016, she still had not had access to medical attention.

37. SPLA soldiers and militia also raped foreign aid workers during the clashes in Juba in July 2016. One victim told the Commission how, on 11 July 2016, she and other women had been dragged from their hiding places in the Terrain Hotel, separated and taken to different rooms by SPLA soldiers and gang-raped. No-one responded to their calls for assistance; they were eventually rescued the following day.

38. Women continue to face enormous risk of sexual violence, including gang rape. The Commission heard testimony of rape and gang rape in the Greater Upper Nile and Equatoria regions, including how rape had become linked to robbery, looting and killing, and the destruction of property. One woman described how she and five others had been seized, dragged to the bushes, violently beaten and gang-raped by seven SPLA soldiers, who tied them to a tree during the ordeal. One of the women was five months pregnant at the time, and consequently miscarried three weeks later.

39. Post-rape medical assistance is grossly inadequate. Several women the Commission met had not received essential medical assistance for the injuries that they had sustained as a result of rape, gang rape, beating, sexual assault or other violence; many had suffered significant damage to their reproductive organs. Many women do not report rape or sexual violence out of fear of stigmatization, although some did out of fear that they might have contracted sexually transmitted infections. A number of rape victims had been accused of dishonouring their families, and therefore abandoned by their husbands and outcast by their communities once the rape became known. In some instances, their communities have forced them to leave their huts and live alone on the outskirts of the village because of the stigma associated with rape. Survivors of sexual violence also complained that they had received no psychosocial support or access to justice in the country.

40. Despite the commitment made on 12 October 2014 by the Government of South Sudan, in a joint communiqué with the Special Representative on Sexual Violence in Conflict, to address conflict-related sexual violence no action has been taken. The Commission was informed that a focal point on sexual violence had been established within the Presidency, but no other steps appeared to have been taken to address this issue.

[6] OHCHR and UNMISS, "Violations and abuses of international human rights law and violations of international humanitarian rights law in the context of the fighting in Juba, South Sudan, in July 2016", January 2017.

[7] Ibid.

SPLM/A in Opposition also pledged to implement a plan of action with the Special Representative;[8] no progress thereon has yet been reported.

41. Even though, on 1 December 2016, the SPLA Chief of General Staff issued a directive on the prevention of and responding to sexual violence, the patterns of sexual violence observed in South Sudan raise important questions with regard to command responsibility within SPLA that warrant further investigation and examination.

C. Violations of the rights of the child

42. Children continue to be associated with armed groups and forces in the conflict in South Sudan. The United Nations Children's Fund (UNICEF) estimates that 17,000 children have been recruited as child soldiers since December 2013, mostly by opposition and self-protection forces. It also reported that 1,300 children had been recruited in 2016 by the Government and their militia allies.[9] During its field visits to Upper Nile and Unity States, the Commission was informed by the humanitarian cluster and child protection officers about large-scale child recruitment. This issue warrants further focus and resources.

43. UNICEF also reported that 1,130 children had been sexually assaulted since 2013, while 2,342 had been killed or maimed.[10] As shocking as these numbers may be, they probably underestimate the actual extent of grave violations endured by children.

44. On 24 June 2014, the United Nations and SPLA signed an agreement for the implementation of a revised plan of action to end the recruitment and use of children and other grave violations against children (A/HRC/27/74, para. 39).

D. Violations of the right to freedom of expression and opinion

45. In the context of the ongoing conflict, the enjoyment of fundamental freedoms and civil liberties has been severely restricted. The Commission received reports of many people who had been arbitrarily arrested, detained, tortured or subjected to inhuman or degrading treatment after having expressed criticism of the Government. Journalists have come under direct attack from State security agencies, and political leaders have publicly expressed hostility towards the media.

46. Although the Transitional Constitution of South Sudan guarantees freedom of expression and press freedom (with limitations with regard to public order, safety and morality), and the Media Authority Act (2013) provides for a number of safeguards for media freedom, the situation on the ground is very different. The National Security Service Law, which took effect in early 2015, grants the National Security Service virtually unfettered powers to arrest and detain suspects, monitor communications, conduct searches and seize property without any clear judicial oversight. Threats of criminal defamation charges are also frequently made by the Service to silence opponents, even though claims of defamation are adjudicated by the Press and Broadcast Complaints Council. In July 2016, the Service confiscated the print runs of one newspaper and arrested the editor,

[8] Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, "South Sudan: UN Special Representative welcomes SPLA-IO action plan to combat rape in war and undertakings by Commanders", press release, 10 November 2015.

[9] UNICEF, "Rise in child recruitment as conflict in South Sudan enters fourth year", news note, 15 December 2016.

[10] Ibid.

threatening him with criminal action for defamation for publishing an article critical of the Government.

47. South Sudan is today one of the most dangerous places in the world for journalists to work; in recent years, a number of journalists have been killed, disappeared or forced into exile.[11] The security establishment has relentlessly pursued a policy of harassment and intimidation against journalists and media outlets in order to censor any negative criticism about the State. UNMISS found that the South Sudan Directorate of Information had ordered journalists not to report on "negative stories" and to submit all news stories to the Government for approval before publication. In the wake of the outbreak of violence in Juba, on 19 July 2016 the editor of the *Juba Monitor* was detained by the National Security Services for having published an article critical of the Government.[12] The editor of the *Nation Mirror* was also ordered to shut down his newspaper after he published details of a report released by a group based in the United States of America alleging misuse of State funds by the nation's leaders.[13] On 24 January 2017, SPLA soldiers arrested four journalists in Juba, including one from UNMISS radio, and accused them of broadcasts critical of the Government.

48. Radio journalists who fled South Sudan to neighbouring countries told the Commission that they had been threatened with arrest by the National Security Service officers, who accused them of conspiring against the State and propagating "Western agendas". At least two journalists interviewed by the Commission alleged that they had been tortured and raped by members of the National Security Service before they fled South Sudan.

49. The Commission met human rights defenders and representatives of civil society organizations, including faith-based representatives, who spoke of pervasive surveillance and monitoring by the National Security Service, and of threats of arrest and detention, forcing many of them to flee the country. They reported that the Service had infiltrated civil society groups, thereby contributing to a toxic environment of mistrust among former colleagues.

50. Donors and non-governmental organizations expressed concern about the restrictive law passed by the National Legislative Assembly on 2 February 2016 requiring any non-governmental organization operating in South Sudan to employ at least 80 per cent South Sudanese nationals at the managerial, middle and junior levels. It also requires non-governmental organizations to open a bank account in South Sudan and to conclude memoranda or agreements with the Government in order to operate or to continue their operations. These provisions have had a severe impact on the work of organizations working on human rights; humanitarian agencies have had to request the permission of the Government and the military to have access to certain restricted areas of the country.

51. Several civil society groups informed the Commission that they had been instructed to shut down their operations because their work was deemed "political" under the new law on non-governmental organizations. A number of civil society activists reported that they had received anonymous threats for having "spread anti-government messages" following a visit by representatives of the Security Council in early September 2016.

---

[11] See Freedom in the World, Freedom House Report 2016, available from https://freedomhouse.org/report/freedom-world/freedom-world-2016.

[12] African Freedom of Expression Exchange, "Freedom of expression: AFEX Urges South Sudan to Protect Rights of Journalists", 20 July 2016.

[13] VOA News, "South Sudanese Authorities Close Prominent Newspaper", 14 September 2016.1

52. A human rights activist whose organization supported the call for an arms embargo on South Sudan was arbitrarily detained and interrogated by the National Security Service, and also had his organization blacklisted. The Commission learned that he had been forced by National Security Service lawyers to amend the organization's founding documents so as to ensure that the Government would become the recipient of the assets of the organization if it were forcibly closed down. On his release, the activist fled to a neighbouring country.

V. Accountability and transitional justice

53. The Commission notes that the lack of accountability for decades of violence during the struggle for independence from the Sudan has helped to fuel the current conflict in South Sudan. Since December 2013, tens of thousands of civilians have been killed in horrific attacks, often targeted on the basis of their ethnicity or perceived allegiances.

54. The Government has announced various measures to hold perpetrators to account, including the establishment of several investigation committees, courts martial and special courts; none of these measures has, however, delivered any concrete result, raising questions about the Government's ability to address the issue of accountability at either the domestic or the international level. In 2014, the Government took steps to establish several committees, including a national investigation committee headed by a former Chief Justice of South Sudan, to inquire into human rights violations committed in the course of the conflict. The findings of the committees were allegedly consolidated in a report submitted to the President at the end of 2014. To date, the report has not been made public.

55. With regard to the violence that broke out in July 2016, the Government reported that several soldiers had been tried before military courts martial for various offences, including loitering, theft, loss of guns, random shooting and murder committed in different parts of Juba. Most of these trials failed, however, to meet international standards. Although the Government reported that two dozen soldiers had been tried for crimes committed in Wau and Juba in July and August, it did not provide any details of the trials. Furthermore, UNMISS reported that the number and level of cases tried by the courts martial did not correlate with or reflect the gravity of the crimes and violations committed by SPLA soldiers during the violence, as most of the soldiers were charged with administrative misconduct or petty offences, such as theft and loss of weapons. The Government has also not prosecuted soldiers, for crimes against civilians in civilian courts, as would be required by national and international standards. The South Sudanese criminal and military justice systems lack the capacity to conduct genuine investigations into allegations of serious violations, especially given the scale of the alleged violations reported in the current conflict.

56. In August 2015, the parties to the conflict signed the Agreement on the Resolution of the Conflict in the Republic of South Sudan, committing to "national reconciliation, accountability, healing and combating impunity" as among the priorities for the Transitional Government of National Unity. Chapter V of the Agreement provides for the establishment of three transitional justice institutions: a hybrid court for South Sudan, to investigate and prosecute individuals suspected of committing genocide, war crimes and crimes against humanity, and serious human rights violations and violations of international humanitarian law; a commission for truth, reconciliation and healing to address the legacy of past human rights abuses; and a compensation and reparation authority.

57. South Sudanese human rights activists welcomed the incorporation of transitional justice into the peace agreement, hailing it as a victory for victims and a strong stand against impunity, which would discourage the use of violence to gain political power. The

results of a national survey carried out from October 2014 to April 2015 confirmed the view that victims wanted perpetrators to be held criminally accountable.[14]

58. The objective of any transitional justice policy in South Sudan should be to end the current culture of impunity and to re-establish the rule of law. The current context is deeply troubling, given the questions surrounding the legitimacy of the peace agreement and the power-sharing model; the fact that large parts of the country are under the control of non-State actors; and that State institutions are largely absent or have been displaced by non-State groups.

59. One prerequisite to implementing any transitional justice mechanism is the political will of the Government to create an environment allowing for an honest and credible inquiry into the truth about past human rights violations and abuses. A conducive environment also requires an end to violent conflict and the massive insecurity that it entails for the country. Victims and witnesses should be able to engage with transitional justice mechanisms and speak without fear or threat of reprisal. Given the ongoing conflict, the growing insecurity and the large-scale polarization of communities, the conditions do not augur well for the establishment of any effective transitional justice mechanism.

60. The commitment of the Transitional Government of National Unity to criminal liability is also a matter of great concern in the light of the blanket amnesties often granted in the past for crimes committed during the conflict; for example, in February 2015, President Kiir issued an order granting amnesty to all those "waging war against the State", with no limitations with regard to allegations of crimes against humanity, war crimes or genocide. The President also granted an amnesty to the South Sudan National Liberation Movement/Army in Gbudue and Maridi States[15] in an agreement signed on 2 April 2016. On 16 November, the President again announced an amnesty for the 750 SPLM/A in Opposition soldiers in the Democratic Republic of the Congo who were willing to return. The people who currently occupy leadership positions in the Transitional Government are the same who, under the terms of the peace agreement, should be brought to trial before the hybrid court. International law prohibits amnesties in the case of serious crimes. The President is therefore fuelling impunity by offering amnesty.

61. Nearly 60 per cent of South Sudanese respondents interviewed in the survey conducted in 2014/15 (see para. 57 above) opposed the offer and granting of amnesties to encourage the warring parties to adhere to the terms of a political settlement.[16] Forty-eight percent of respondents would not support an amnesty even if it were necessary for peace.

A. Hybrid court for South Sudan

62. The Agreement on the Resolution of the Conflict in the Republic of South Sudan provides for the establishment of a hybrid court for South Sudan to "investigate and prosecute individuals bearing criminal responsibility for violations of international law and/or applicable South Sudanese law committed between 15 December 2013 and the end of the transitional period". In September 2015, the African Union Peace and Security Council authorized the African Union Commission to establish a hybrid court for South Sudan.

---

[14] South Sudan Law Society, *Search for a New Beginning: Perceptions of Truth, Justice, Reconciliation and Healing in South Sudan*, June 2015.

[15] New States created pursuant to establishment order No. 36/2015.

[16] Ibid.

63. The timelines and milestones for the establishment of the hybrid court were removed from the final, signed peace agreement, leaving the entire process open-ended, with no deadlines; as a result, (few, if any) efforts were made to establish the court between August 2015 and the spring of 2016. Valuable time was lost, and possibly, important evidence of major war crimes and human rights abuses. The African Union informed the Commission that, as at early October 2016, it had managed to raise the funds to commence work on the establishment of the court. It also stated that its timeline for operationalizing the court was approximately three years (autumn of 2019), more than four years after the signing of the peace agreement.

64. The Office of Legal Counsel of the African Union Commission also informed the Commission that a draft statute and a memorandum of understanding for the establishment of the hybrid court had been submitted to the Government of South Sudan for its consideration. The Commission was informed by the Minister for Justice of South Sudan that the responsibility for the establishment of the court lay with the African Union.

65. A large number of non-governmental organizations have called for the establishment of an investigative mechanism before the hybrid court becomes fully operational, as well as the setting-up of a witness protection programme and a transparent and credible selection process for judges. On 20 January 2017, a coalition of civil society organizations engaged in transitional justice initiatives, the Transitional Justice Working Group for South Sudan, delivered a briefing paper to African Union officials in which it argued that the establishment of a hybrid court "[could not] in and of itself resolve the ongoing conflict", but would contribute to breaking, or at least slowing, the cycle of violence and revenge.

B. Commission for truth, reconciliation and healing

66. Chapter V of the Agreement on the Resolution of the Conflict in the Republic of South Sudan provides for the establishment of a commission for truth, reconciliation and healing. The Government of South Sudan, supported by the United Nations Development Programme (UNDP), has advanced the process of establishing the commission by compiling two papers, on the national consultation process required by the peace agreement, and on best practices for truth commissions. The survey conducted in 2014/15 (see para. 57 above) found that respondents emphasized the importance of a nationally owned process for documenting human rights abuses and publicly acknowledging the role of both State and non-State actors in committing violent acts against civilians in the current and past conflicts. Proponents of the commission argued that a truth-seeking process could be an opportunity for the State to demonstrate its commitment to building a culture of respect for human rights and the rule of law in South Sudan, and that a public dialogue about the legacy of violence in the country could help to dispel the fear resulting from decades of civil conflict.

67. National consultations in the context of South Sudan are critical for incorporating the views of victims, and are an intrinsic component of a holistic transitional justice framework. A major challenge for the people of South Sudan lies in whether national consultations can be held or any truth-seeking process implemented, given that the country is in the midst of an ethnic civil war.

68. The Minister for Justice established a technical committee, comprising representatives of diverse sectors including government, civil society and the faith communities, that is responsible for the process of establishing the commission for truth, reconciliation and healing. The committee, launched by the First Vice-President on 15 December 2016, had the goal of hosting national consultations between February and March 2017 to produce draft legislation by April/May 2017.

69. While the establishment of the technical committee is a major step forward, the Commission was informed that victims and victim communities are not adequately represented in it. In a country that has endured conflict for decades, the very notion of who is to be considered a "victim" is hotly disputed. The committee must therefore be inclusive of all those who have suffered.

C. Compensation and reparations authority

70. Chapter V of the Agreement on the Resolution of the Conflict in the Republic of South Sudan also proposes the establishment of a compensation and reparations authority. Given the nature and scope of the conflict in South Sudan, the issues of reparations and compensation are critical, given that the conflict has displaced millions of South Sudanese and left many without a livelihood. In this context, reparations and compensation will need to focus on both material and non-material elements, including restitution, compensation, rehabilitation and guarantees of non-repetition. According to the peace agreement, the new compensation and reparation authority "shall provide material and financial support to citizens whose property was destroyed by the conflict". Surprisingly, no mention is made of compensation for the loss of human lives or of compensation to which orphans and widows of victims of massacres or targeted killings would be entitled. The payment of compensation to murder victims is customary in some South Sudanese cultures.

71. The establishment of the compensation and reparations authority has been hampered by the lack of political will of the Government of South Sudan. At the time of the signing the Agreement on the Resolution of the Conflict in the Republic of South Sudan, President Kiir expressed his reservations about the establishment of the body, and argued that funds should be instead channelled into "the reconstruction of infrastructure and the rebuilding of livelihoods of communities in the States most affected by the conflict". Many Governments argue that, instead of paying for reparations and compensation, funds should be invested in development and infrastructure. In the view of the Commission, this should never be an "either or" situation, given that every citizen is entitled to benefit from development funds. It is well established internationally that reparations are an acknowledgement and recognition of the wrongdoing done to a victim, without which many victims and survivors would not be in a position to rebuild their lives.

72. The survey conducted in 2014/15 found that reparations for survivors enjoyed widespread support, with 81 per cent of respondents agreeing that the Government should provide compensation to victims of human rights violations and abuses.[17] One important element of the compensation and reparations authority should be how to address socioeconomic grievances in South Sudan to avoid further conflicts.

73. Traditional and customary dispute resolution mechanisms have played a key role in mediating disputes over grazing land and cattle, and marriage disputes, even where they have resulted in killings.[18] The technical committee appointed to establish the commission for truth, reconciliation and healing and the compensation and reparations authority will need to consider whether and how to integrate traditional dispute mechanisms into transitional justice mechanisms in order to address conflicts at the local level.

74. Historically, transitional justice has addressed the rights of women and advanced their status in societies where patriarchy, tradition and custom have often discriminated

[17] South Sudan Law Society, *Search for a New Beginning* (see footnote 14).

[18] Nhial Tiitmamer, "Transitional Justice for Stabilizing South Sudan: Lessons from Global and Local Contexts", The Sudd Institute, policy brief, 21 July 2016.

against them and been a source for structural violence against women. The commission for truth, reconciliation and healing and the compensation and reparations authority could be excellent vehicles to advance the rights of girls and women through legal and institutional reform, improving their status in society at all levels. In the view of the Commission, the technical committee should ensure that a gender perspective is incorporated into the legislation establishing both the commission for truth, reconciliation and healing and the compensation and reparations authority.

D. Proposed national dialogue

75. On 14 December 2016, President Salva Kiir announced the launch of a national dialogue as both "a forum and a process through which the people of South Sudan shall gather to redefine the basis of their unity as it relates to nationhood, redefine citizenship and belonging, restructure the State and renegotiate social contracts and membership in the world of nations." The proposal envisages three phases of consultation, from local to the national levels, for settling broad political, social and cultural grievances and intercommunal conflicts, to achieve "peace, healing and reconciliation".

76. While the Government suggests that the national dialogue is situated within the framework of the Agreement on the Resolution of the Conflict in the Republic of South Sudan and is not intended to contravene its terms, it could lead to potential overlap with the commission for truth, reconciliation and healing. Furthermore, observers and stakeholders argue that, to have any chance of success, any consultation, dialogue or truth-seeking process must be truly inclusive of all political, ethnic and social groups and be fully transparent and credible; serious doubts persist about whether this, however, can be accomplished in the current political context. According to President Kiir, the national dialogue should be seen as credible, genuine and open to all the people of South Sudan, adding that "the Government will not lead or control the process". Given however that the President has designated himself the "patron" of the dialogue and has also appointed the members of its steering committee, it is not surprising that the initiative has been roundly criticized. Led by a steering committee whose members have been appointed directly by the President and which excludes other ethnic groups, including armed groups and opposition, the national dialogue would appear to have little chance of success.

77. While President Kiir has stated that his Government will guarantee the safety and freedom of participants in the national dialogue, including those who are currently out of the country, the fears expressed by many amid the continuing government crackdowns on the media and on freedom of speech and of association, including the closing of media houses, the murder of journalists and the indefinite detention of activists and others without charge or due process, give cause for concern.

E. The way forward

78. South Sudan, like many countries emerging from periods of protracted conflict, has to confront the political challenge of holding perpetrators to account. One major difficulty is that alleged perpetrators occupy senior political and military positions in the post-conflict State. Under international law, the State has the primary obligation to investigate and prosecute those individuals responsible for human rights violations and abuses and for violations of international humanitarian law. In the case of South Sudan, the African Union is tasked with the responsibility for establishing a hybrid court for South Sudan and has indicated its intention to sign a cooperation agreement with the Government on matters relating to the court.

79. Recent statements by the Government of South Sudan suggest that it is prioritizing peace over efforts to bring to justice those responsible for human rights violations and abuses in South Sudan. It appears to present justice and reconciliation as competing objectives in the process of building sustainable peace, arguing that the immediate end to this violent conflict should take precedence over accountability for serious crimes, while those in favour of justice argue that ending impunity for human rights violations is crucial for future deterrence.

80. The emphasis on peace first has failed to deliver the "just" peace for which so many South Sudanese citizens yearn. The delay of the African Union in establishing the hybrid court for South Sudan has led many to question whether these serious crimes and gross human rights violations and abuses would ever be prosecuted. As experiences in many States in transition have demonstrated, peace and reconciliation can never be achieved without truth and justice. Any notion that peace comes first before justice is to ignore the way they are linked. Too many of those who say "justice should come later" really mean "justice should never come at all", hoping that the passage of time leads to the elimination and degradation of evidence, and that international attention will turn elsewhere.

VI. Conclusion and recommendations

A. Conclusions

81. Since the outbreak of violence in July 2016, there has been a massive increase in gross human rights violations and abuses. Intense fighting and violence on a larger scale continued in February 2017, drawing renewed condemnation from the Security Council on 10 February and yet another call for those responsible to be held accountable. The conduct of the Government of South Sudan and of other parties to the conflict suggests the deliberate targeting of civilian populations on the basis of their ethnic identity by means of killings, abductions, unlawful detentions or deprivation of liberty, rape and sexual violence, and the burning of villages and looting.

82. Following its two missions to South Sudan, the Commission warned that a process of ethnic cleansing was under way in the country. The Special Adviser on the Prevention of Genocide also warned that the indicators for genocide were in place, a warning he renewed on 7 February 2017. Warning signs and enablers for genocide and ethnic cleansing include the cover of an ongoing conflict to act as a "smoke screen", several low-level and isolated acts of violence to start the process, the dehumanization of others through hate speech, economic volatility and instability, deliberate starvation, the bombardment of and attacks against civilians, forced displacement and the burning of villages. The targeting of civilians on the basis of their ethnic identity is unacceptable and amounts to ethnic cleansing.

83. United Nations reports indicate that both government forces and non-State armed groups in South Sudan fail completely to uphold the principle of distinction between combatants, non-combatants and civilians.

84. An abundance of reports prepared by the United Nations, the African Union and non-governmental organizations about the situation of human rights in South Sudan since December 2013 have documented credible allegations of widespread human rights violations and abuses, which if established before a court of law, may (depending on the circumstances) amount to war crimes. These reports and assessments are consistent and resonate with the Commission's findings based on

interviews with South Sudanese victims across the country, and United Nations, African Union and other officials in the region.

85. Reports indicate that these violations have mainly been committed by government soldiers, members of the National Security Service, police officers and militias aligned with SPLA. Human rights violations and abuses have also been committed by SPLM/A in Opposition and militia groups aligned with them, albeit on a smaller scale.

86. The Commission deems the continued restrictions and impediments on access to vulnerable populations placed on the United Nations and humanitarian agencies operating in South Sudan unlawful. The "scorched earth" policy may amount to starvation, which is prohibited by international law as a method of warfare, as is denying civilians safe passage from besieged areas. The civilian population is not provided with adequate food or access to health care, and their right to life is often threatened or breached by all parties to the conflict throughout the country. Moreover, the special duty of care for the well-being of children continues to be breached.

87. The continued denial of access by the Government of South Sudan to UNMISS and associated United Nations agencies to conflict-affected areas also has a negative impact on the mandate of the United Nations to monitor and report on human rights violations and abuses.

88. The conflict in South Sudan has resulted in an extremely large number of cases of conflict-related sexual violence. Impunity for conflict-related sexual violence has become entrenched, and is a direct consequence of the failure of the Government to take action against perpetrators of such violations, and to hold their commanders and superiors to account.

89. The magnitude and intensity of the non-international armed conflict, the precarious economic situation, the deliberate denial of humanitarian assistance, and the indiscriminate shelling and targeting of communities based on their ethnicity all attest to the gravity of the situation in South Sudan. The international community, including IGAD, the African Union and the United Nations, should act with utmost urgency to maintain the pressure on the Government of South Sudan and non-State actors to end the conflict immediately. Unless impunity is addressed and perpetrators of serious violations are brought to account, the viability of South Sudan as a new nation State will be stymied, if it has not been already. The President's offers of amnesty to those who continue to perpetrate the most egregious violations in South Sudan are a clear breach of the State's obligations under international law.

90. While the civilian and military justice systems do not have the capacity to address accountability for these violations and crimes in a manner consistent with due process and other international norms, or within a reasonable time frame after their commission, lack of capacity does not exonerate the Government of South Sudan of its primary responsibility for addressing such crimes and for promoting accountability. While national capacity-building should be a long-term goal, the current national system cannot be counted on to provide meaningful accountability for serious international (or national) crimes, even if committed by senior political, governmental and military leaders.

91. The Commission regrets the absence of political will, particularly on the part of the Government, to implement the Agreement on the Resolution of the Conflict in the Republic of South Sudan, and the disinterest of political leaders with regard to the plight of their people. On 7 February 2017, the Special Adviser on the Prevention of Genocide condemned President Kiir's lack of commitment to the peace process and to

ending violence. Both regional and international actors seem unable to exert any substantial influence on the warring parties to stop the conflict, while regional national interests undermine collective action to save South Sudan.

92. The Commission notes with concern that critical evidence is being lost every day as witnesses are killed or disappeared, and the whereabouts of displaced witnesses becomes unknown. Physical evidence degrades, and documentary and other similar evidence is lost, concealed or destroyed.

B. Recommendations

1. Government of South Sudan

93. The Commission recommends that the Government of South Sudan:

(a) Immediately cease hostilities and conclude a permanent ceasefire. It should renew publicly its commitment to the full implementation of the Agreement on the Resolution of the Conflict in the Republic of South Sudan, including by establishing and implementing all three institutions described in chapter V thereof. The Government should cooperate with the African Union in the speedy establishment of the hybrid court for South Sudan, and set a timetable for the prompt conclusion of an agreement on cooperation;

(b) As a priority, comply with its obligations under both national and international law to promote and protect the rights of civilians, take measures to prevent future violations, including torture, rape and conflict-related sexual violence, arbitrary detention, abductions, and killings by the security forces, and ensure that those responsible are held accountable. Compliance with obligations includes the prohibition of amnesties for serious crimes;

(c) Prioritize security sector reform with a view to building a pluralistic and ethnically inclusive security sector. Trust in the security forces, including the military, police and national security services, has been eroded because of the role they have played in the conflict and in the perpetration of serious crimes;

(d) Give unfettered access to the United Nations, the International Committee of the Red Cross, local human rights defenders and humanitarian workers to allow them to carry out their work in accordance with international law and their mandates;

(e) Establish conditions that are conducive to the return of internally displaced persons and refugees to their homes, allowing them to live in freedom and dignity;

(f) End its repressive campaign against the media and civil society actors, including those who cooperate with the United Nations, and create an environment in which the rights to freedom of speech and of association and to freedom of the media are respected. All senior political and government officials, including the President, should refrain from hate speech and speech that fuels ethnic tensions. The President, senior government officials and politicians should commit publicly to a policy of ethnic plurality and diversity, and inclusiveness, upholding the principles of equality and non-discrimination;

(g) Repeal laws that have the effect of restricting or weakening the activities of civil society and non-governmental organizations, including activities involving monitoring and reporting on government policies and human rights violations;

(h) **With regard to criminal justice accountability measures, extend its full cooperation and support to the hybrid court for South Sudan by assisting its investigations and complying with its rulings;**

(i) **Support genuine national consultations, including through public education programmes, so as to ensure informed participation by victims, women's groups and all stakeholders, and conduct a needs assessment to inform the mechanisms designed to facilitate truth recovery, reparations, reconciliation and the guarantee of non-recurrence;**

(j) **Formulate the law establishing the commission on truth, reconciliation and healing in accordance with comparative international best practices, building on the provisions of the Agreement on the Resolution of the Conflict in the Republic of South Sudan and taking into account the local context and resource constraints and capacity in South Sudan. The legislation should specifically include provisions that build substantive and procedural linkages between transitional justice institutions, including the hybrid court;**

(k) **Determine the mandate, functions and powers of the commission on truth, reconciliation and healing, including the temporal mandate, through public consultations in accordance with best international practices. The selection and appointment of commission members should be conducted in an open and transparent manner, with candidates subjected to an independent vetting and screening process so as to ensure that they are independent, credible and non-partisan;**

(l) **In the light of the deep injuries and trauma caused by the conflict, make psychosocial support available for victims and witnesses from the commencement of the process;**

(m) **Include in the mandate of the technical committee established by the Government the establishment of a compensation and reparations authority, and consult with victims and survivors before drafting legislation, which should provide for compensation and reparations. Compensation should take not only loss of property into account, but also losses arising from gross violations such as killings, torture, sexual violence, abductions, forced displacement and enforced disappearances.**

2. Non-State armed groups

94. **The Commission recommends that all non-State armed groups, including those aligned with the opposition:**

(a) **Cease hostilities immediately, conclude a permanent ceasefire, and ensure the protection of civilians under their control, preventing human rights abuses;**

(b) **Renew publicly their commitment to the full implementation of the Agreement on the Resolution of the Conflict in the Republic of South Sudan, including of the institutions envisaged in chapter V thereof;**

(c) **Allow unfettered access to the United Nations, the International Committee of the Red Cross, local human rights defenders and humanitarian workers to areas under their control to enable them carry out their work in accordance with international law and their respective mandate.**

3. United Nations and African Union

95. **Noting that Chapter VII of the Charter of the United Nations, article 4(h) of the Constitutive Act of the African Union, and chapter V of the Agreement on the**

Resolution of the Conflict in the Republic of South Sudan provide for full authority for the establishment of the hybrid court for South Sudan in lieu of an agreement with the Government if necessary, the African Union should act immediately to ensure that the hybrid court is operational within six to nine months of the present report

96. **The Commission recommends the immediate establishment of an international impartial and independent investigation by the United Nations into the most serious crimes, including conflict-related sexual violence, committed since December 2013 by, inter alia, collecting, preserving and analysing evidence of human rights violations and violations of international humanitarian law. The aim of the investigation should be to facilitate and expedite fair and independent criminal proceedings in accordance with international law standards. It should also support criminal proceedings before the hybrid court for South Sudan and national, regional or international courts or tribunals that have, or in the future have, jurisdiction over these crimes. The Commission urges the parties concerned to prioritize the investigation and documentation of conflict-related sexual violence.**